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Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of 15 December 1999, entitled "Small arms"

I. Introduction

A. The mandate

1. In paragraph 14 of its resolution 54/54 V of 15 December 1999, entitled "Small arms", the General Assembly requested the Secretary-General, in order to assist in preventing illicit trafficking in and illicit circulation of small arms and light weapons: (a) to carry out a study, within available financial resources and with any other assistance provided by Member States in a position to do so, and with the assistance of governmental experts appointed by him, on the basis of equitable geographical representation, while seeking the views of Member States, on the feasibility of restricting the manufacture and trade of such weapons to the manufacturers and dealers authorized by States, which would cover the brokering activities, particularly illicit activities, relating to small arms and light weapons, including transportation agents and financial transactions; and (b) to submit the study as one of the background documents for the Conference to be held in 2001.

2. In May 2000, the Secretary-General appointed a panel of governmental experts from the following 20 countries: Argentina, Belgium, Brazil, Bulgaria, Canada, China, Egypt, France, India, Israel, Jamaica, Kenya, Mexico, Norway, Pakistan, Poland, Russian Federation, South Africa, United Kingdom of Great Britain and Northern Ireland and United States of America.

3. The Group of Experts held three sessions in New York, from 14 to 19 May and 10 to 14 July 2000, and from 5 to 9 February 2001. The Group also met in Sofia from 17 to 19 October 2000 for an informal workshop and in Ottawa from 29 January to 2 February 2001 for informal consultations at the invitation of the respective Governments.

4. At its first session, the Group decided to receive additional contributions from experts on relevant areas. Presentations were made at the second session by experts on the status of the negotiation of a draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition in Vienna under the aegis of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, and from civil society, including representatives of manufacturers and other NGOs.

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B. Approach and working methodology of the Group

5. The Group of Experts considered for its work a number of United Nations documents prepared at the request of the General Assembly and the Economic and Social Council and transmitted to them for their consideration of the issue of illicit trade in small arms and light weapons in all its aspects. These consisted mainly of United Nations documents relating to the issue of small arms and light weapons (in particular, General Assembly resolution 54/54 V, the report of the Panel of Governmental Experts on Small Arms (A/52/298) of 1997, the report of the Group of Governmental Experts on Small Arms (A/54/258) of 1999, the report of the Group of Experts on the problem of ammunition and explosives (A/54/155) of 1999 and the note by the Secretary-General (A/54/160) of 1999). The Group took into account the replies received from Governments at the request of the General Assembly. It also took account of national legislation and other documents submitted by Member States and documentation of regional organizations and arrangements such as ECOWAS, the European Union, OAS, OSCE, NATO/EAPC as well as ad hoc regional groupings. In addition, the Group had at its disposal documents and publications from other organizations such as academic institutions, NGOs and individuals (see annex III for a list of relevant documents circulated to the Group).

6. Relevant initiatives have been taken in recent years within the United Nations system to address different aspects of the problem of small arms and light weapons. At the global level two important processes are under way. First, the United Nations General Assembly process, supported by expert studies, has reached the stage of preparing for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, scheduled to be held in New York from 9 to 20 July 2001. In Vienna, under the aegis of the Commission on Crime Prevention and Criminal Justice, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime is working on a draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

7. At the regional and subregional level the Organization of American States in 1997 concluded the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, which sets basic standards for the control of the import, export and transit of arms, and also adopted model regulations for the control of the international movement of firearms. One important feature of the Inter-American Convention is the promotion of further cooperation among States, including between law enforcement agencies. Regional initiatives in Africa have focused on the collection and destruction of arms, moratoria on transfers and production, and cooperation between judicial and enforcement agencies. The European Union has focused on transparency and voluntary restraint in transfers. The Stability Pact for South-Eastern Europe is focusing on the coordination of common approaches by participating States to the form and content of end-use/end-user documentation and the collection and destruction of small arms and light weapons. OSCE is focused, inter alia, on combating the illicit trafficking of small arms and light weapons through political agreement on minimum standards regulating the manufacturing, marking, export criteria and export controls, management of stockpiles and their safe disposal as well as transparency and exchange of information. EAPC expanded its focus to cover small arms and light weapons issues from the standpoint of law enforcement and export controls improvement as well as development of stockpile management and tracing. (See annex II for a list of documents representing previous work undertaken within the United Nations system, in other international forums and regional forums and at the national level.)

8. Since the Ninth United Nations Conference on the Prevention of Crime and the Treatment of Offenders (Cairo, 1995), and coinciding with the adoption of resolution 50/70 B on 15 December 1995 by the United Nations in New York, the Vienna-based process has been exploring cooperative avenues for firearms regulation. As a part of this process, an international study on firearm regulation[1] was also released as an ongoing survey; 53 Governments provided data for the study, which is the first comparative study of the levels of firearm-related harm, and the national and international efforts being made to regulate firearms and to reduce this harm around the world. The draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition is an integral

part of the United Nations Convention against Transnational Organized Crime; it builds on the 1997 OAS Inter-American Convention and contains useful elements, in particular on licensing authorization of movements, marking and tracing of firearms as well as definitions.

9. While the Expert Group was preparing the feasibility study, several States were actively considering new legislation relating to the regulation of manufacturing and more effective regulation of trade. At the same time several reports on United Nations Security Council arms embargoes underlined the need for strengthening their effectiveness, particularly in the light of the demonstrated ability of certain dealers, arms brokers and transportation agents to operate in contravention of Security Council arms embargoes.

10. In furtherance of its mandate, the Expert Group has considered practical approaches in relation to the more effective regulation of State and private manufacture and trade. The purpose of the present study is to assist in preventing the illicit trafficking in and the illicit circulation of small arms and light weapons. In this regard, the Group also saw its work as contributing to the broader international effort to address excessive and destabilizing accumulations and transfers of small arms and light weapons.[2] To the extent that the mandate of the Group necessitated consideration of the broader aspects concerning stockpiles and surpluses of small arms and light weapons, the Group considered those issues.

11. The Expert Group built on the foundation of principles and recommendations contained in the work of the United Nations Panel of Governmental Experts on Small Arms (A/52/298) and the work of the United Nations Group of Governmental Experts on Small Arms (A/54/258). The Group sought to avoid unnecessary duplication and overlap with the work of other United Nations bodies and noted that the mandates of those bodies and that of the Group were both complementary and mutually reinforcing.

12. In order to be as comprehensive as possible in terms of options that States might wish to consider, the Expert Group has sought to identify and evaluate a range of existing laws, regulations, administrative procedures and related approaches at the national and international levels as well as possible new approaches in the light of ongoing developments. In its evaluation of these options, the Group has considered such issues as:

- The aim and scope of the particular measure;
- Whether the measure is to be implemented on a national, regional or global basis;
- Whether the measure is in the form of a treaty, a law, a regulation, a political commitment or a voluntary measure;
- The degree of practical difficulty in implementing the measure;
- The benefits of considering several measures in combination;
- The benefits and limitations of pursuing particular measures or approaches at the national or international level;
- The prospects for bilateral, regional and international cooperation in relation to specific measures or approaches;
- The role that technical cooperation and assistance might play in addressing issues of State capacity to implement effective approaches.

In this manner, the Group has sought to demonstrate the degree of feasibility of various approaches as a solid basis for their further consideration by Member States participating in the 2001 United Nations Conference.

II. Nature and scope of the problem

A. General problems

13. Many United Nations resolutions, decisions, statements and reports have noted that excessive and destabilizing accumulations and transfers of small arms and light weapons are closely related to the increased incidence and intensity of conflicts and high levels of crime and violence. It is therefore a legitimate and urgent concern for the international community to take measures to prevent and reduce illicit trafficking and excessive and destabilizing accumulations and transfers. The Expert Group endorsed the understanding of the nature and scope of the problem detailed in the 1997 and 1999 reports of the United Nations groups of governmental experts on small arms. The 1999 report noted that "accumulations of small

arms and light weapons by themselves do not cause the conflicts in which they are used. They can, however, exacerbate and increase their lethality. These conflicts have underlying causes which arise from a number of accumulated and complex political, commercial, socio-economic, ethnic, cultural and ideological factors. Such conflicts will not be finally resolved without addressing the root causes" (A/54/258, para. 16).

14. Furthermore, the report states: "Globally, it has been estimated that more than 500 million small arms and light weapons are in existence. They continue to be produced in large numbers, mostly in developed countries, although they are now manufactured in over 70 countries on an industrial scale and in numerous countries as a craft industry. Small arms and light weapons are standard equipment for armed forces and internal security forces in every country" (ibid., para. 12). Thus, the manufacture, transfer and stockpiling of small arms and light weapons are required for legal and legitimate purposes. The objective is to prevent and reduce excessive and destabilizing accumulations and transfers and to prevent and combat the illicit manufacture and trafficking in such weapons.

15. "Among the main factors contributing to the availability of small arms and light weapons is the increase in the number of legitimate producers of such weapons combined with continuing illegitimate arms manufacturing. There are numerous sources of newly manufactured small arms and light weapons located in all regions of the world, in many cases as a result of transfer of technology and manufacturing licences from existing producers. At the same time, a large proportion of the accumulation and flow of small arms and light weapons is constituted by recirculated weapons or arms from existing stockpiles" (ibid., para. 18).

16. The 1999 report concludes: "One factor contributing to the availability of small arms and light weapons in many areas is their earlier supply by cold war opponents. Much of the supply and acquisition of arms in regions of conflict dealt with by the United Nations has been conducted by Governments or by legal entities authorized by Governments. Some States have exercised insufficient control and restraint over transfers or holdings of small arms and light weapons. Moreover, arms supplies associated with foreign interference in areas of conflict are still a feature of current realities. In general, the lines of supply are often complex and difficult to monitor, facilitated by the relative ease with which transfers of small arms and light weapons can be concealed" (ibid., para. 19).

17. A major problem that arose after the end of the cold war was the crumbling of State structures in some regions of the world that helped in the unauthorized access to small arms and light weapons by opposing factions. Therefore, despite the fact that such arms were held by legitimate government authorities and that sufficient legislation might have existed in those States, the breakdown of the State structure and the resulting problem of lack of State authority produced an uncontrolled spread of small arms and light weapons.

18. "The illicit trafficking and circulation of small arms and light weapons throughout the world is not only a major source of insecurity but also impedes socio-economic development. Illicit arms supply networks often involve legal arms purchases or transfers which are subsequently diverted to unauthorized recipients, or leakage from arms storage facilities. Arms brokers play a key role in such networks, along with disreputable transportation and financial companies. Illicit arms trafficking can sometimes be helped by negligent or corrupt governmental officials, and by inadequate national legislation border and customs controls. Smuggling of illicit arms by criminals, drug traffickers, terrorists, mercenaries or insurgent groups is also an important factor. Efforts to combat illicit arms trafficking are in some cases hampered by inadequate national systems to control stocks and transfers of arms, shortcomings or differences in the legislation and enforcement mechanisms between the States involved, and a lack of information exchange and cooperation at the national, regional and international levels" (ibid., para. 20). Illicit brokering activities may include barter deals involving transfers of small arms and light weapons, ammunition and/or explosives, in exchange for other means of payment such as natural resources, drugs, special services, stocks, merchandise, etc. Furthermore, some of these activities are already conducted by the brokers or other participants in the chain of the illicit trade, by using e-commerce channels and networks. This e-commerce is frequently encoded or encrypted, thus placing an extra burden on the law enforcement institutions to detect it.

19. In his report to the Millennium Assembly of the United Nations (A/54/2000), the Secretary-General

stated that the task of effective proliferation control in the field of small arms and light weapons is made far harder than it needs to be because of irresponsible behaviour on the part of some States and lack of capacity by others, together with a lack of transparency that is characteristic of much of the arms trade. He concludes that these weapons need to be brought under the control of States, and that States should exercise such control in a responsible manner, including exercising appropriate restraint in relation to accumulations and transfers of small arms and light weapons (ibid., paras. 241 and 245).

B. Issues of specific concern

20. The issues of particular concern for the present report need to be considered in the context of the nature and scope of the overall problem as outlined above. In this context, the Expert Group noted the need for States to establish, maintain and enforce effective national regulations and controls on the manufacture and transfer of small arms and light weapons.

21. At present, most States regulate the manufacture and transfer of small arms and light weapons through State ownership and/or licensing. The legislative and administrative bases for such regulations vary according to the different traditions and situation of each country. The Expert Group noted, in line with previous United Nations reports, that existing State regulations and controls in some States are evidently inadequate to prevent illicit arms trafficking or excessive and destabilizing accumulations and flows of small arms and light weapons in many countries and regions. Weaknesses in some national laws, regulations, licensing procedures and enforcement mechanisms are exacerbated by lack of capacity, insufficient political will, inconsistent approaches and inadequate coordination and cooperation at the national, bilateral, regional and global levels.

22. There is wide variation in national systems for regulating the manufacture of small arms and light weapons, their parts and components, ammunition and explosives, and associated technologies and services, and in most countries such activities are well regulated. However, in some States, there are problems of insufficient State control, licensing or authorization of the manufacture of such goods, and of the stockpiles of arms kept by manufacturers and dealers. There are gaps in some States' laws. Legal definitions vary, as do systems for regulation and oversight and minimum standards relating to record-keeping and conditions of manufacture. Although there are many examples of good practice, in some cases national regulatory and enforcement systems are inadequate. Similarly, since prescribed standards and techniques for marking weapons during the process of manufacture also vary substantially, in some cases marking and record-keeping systems are inadequate to enable weapons tracing.

23. When they exist, regional efforts, by their very nature, do not address the global nature of the sources of small arms and light weapons and the increasingly transnational networks of brokers, dealers, financiers and transporters. They often do not address government transfers and are more of a mechanism for facilitating regional cooperation of law enforcement agencies. In the latter aspect, moreover, experience of implementation is limited and problems of insufficient State capacity have already become visible. More significantly, given well-known political constraints, some regions have not been able to build regional norms and frameworks for cooperation, and therefore need an international framework to address the problem of small arms and light weapons proliferation.

24. Nearly all States maintain laws, regulations and administrative procedures to control the export, import, transit and retransfer of arms and military goods and technologies. However, in many cases they require strengthening and updating in relation to small arms and light weapons. Many States that rarely participate in other aspects of the conventional arms trade are often suppliers or recipients of used or new small arms and light weapons, and such weapons are relatively vulnerable to diversion to unauthorized uses and illicit trafficking. Furthermore, some States lack the capacity to operate and enforce regulations, due for example to capacity problems in Government or insufficient border controls.

25. Authorized transfers can and have contributed to excessive and destabilizing accumulations of small arms and light weapons. Many weapons in illicit circulation originate from legal trade. In many instances, this was due to lack of awareness of the risks of diversion or of the situation of the recipient or end-user. However, the Expert Group also noted inadequate restraint in some legal transfers of small arms and light weapons, and the need for States to respect the principles and purposes of the Charter of the United

Nations, as expressed in the "Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991"[3] and the "Guidelines on conventional arms control/limitation and disarmament, with particular emphasis on consolidation of peace in the context of General Assembly resolution 51/45 N".[4]

26. Efforts to prevent and combat illicit trafficking and prevent and reduce excessive and destabilizing accumulations and flows of small arms and light weapons are hampered by inadequate international cooperation and coordination in some areas. For example, illicit arms traffickers have exploited weaknesses and inconsistencies in relation to States' controls on the manufacture and transfer of small arms and light weapons. There is often inadequate cooperation and information exchange between national institutions responsible for issuing and operating relevant legislation and regulations concerning arms transfers control, licensing bodies, customs authorities, law enforcement agencies and regulators of manufacturers and dealers. Similarly, lack of information about other States' systems of regulation and control, or about patterns of illicit or destabilizing arms flows, hampers preventive or enforcement measures.

27. Many States have not put in place laws, regulations or administrative procedures that regulate arms brokering and related activities. This means that activities that sometimes contribute substantially to illicit trafficking and to excessive and destabilizing accumulations and transfers of small arms and light weapons are not subject to regulation in many countries. Moreover, legal ambiguities in this area help to cloud the distinction between legal and illegal activities and thus undermine effective controls. Several States have recently enacted legislation that specifically regulates arms brokering activities. Some States have arms export control laws that are designed in such a way that they can be used to regulate brokering activities. This approach can also provide some regulation of the activities of other types of agents and dealers involved in arms transfer transactions, including transportation and financial agents. In general, however, the regulation of such activities poses particular challenges.

28. Many States do not have in place laws, regulations or administrative procedures that specifically regulate the licensed manufacture of small arms and light weapons abroad. In general, export control regulations cover at least some aspects of activities under licensed production agreements, for example through their controls on the supply of technology, production equipment and parts. However, there may be significant gaps in these controls.

29. Small arms and light weapons in illicit circulation also contribute to excessive and destabilizing accumulations and flows of arms. Weapons are also lost from insecure official and authorized stocks through the failure to implement established industry practices for inventory control, compounded by theft, corruption and neglect. Surplus arms are sometimes transferred or sold with inadequate restraint or control. The 1997 and 1999 reports included a number of important recommendations aimed at improving arms stockpile management and security and promoting the responsible management and disposal of surplus weapons (A/54/258, recommendations 14-16, paras. 78-81). These issues are relevant to the mandate of the present Expert Group, because of the need to ensure good management and security of arms stocked by manufacturers and dealers, and because many of the arms brokering activities of concern relate to deals involving surplus weapons.

30. There is an increasing body of evidence on breaches of mandatory United Nations arms embargoes, as is illustrated by the recent reports on Angola and Sierra Leone. Issues of concern are the lack of political will of some States to comply with and to enforce the embargoes, a lack of capacity to exercise effective controls and the activities of unscrupulous dealers and transportation agents using circuitous routes and loopholes in regulations to supply small arms and light weapons.

31. The emergence of free ports worldwide poses particular challenges for the international control of arms movements. Port operators are at great pains to offer international shippers and transporters speedy clearance in order to attract trade and sometimes regard trans-shipments of goods as not their prime responsibility to control. Ports with ineffective control run the risk of being targeted by arms brokers and dealers to divert arms shipments from their intended destination. Free ports can provide opportunities for falsification or amendment of end-user certificates and manipulation of bills of lading. Most ships used in illegal arms shipments operate under flags of convenience. Adequate marine laws and regulated and

strict supervision in free ports is required to address these problems. In addition to these illegal activities there are the financial transactions associated with the diversion of arms. Often the proceeds from such deals, facilitated by lack of control in free ports, are laundered through accounts in offshore tax havens where controls are equally lax.

32. It is generally known that the availability of small arms and light weapons-related ammunition and explosives in the hands of unauthorized actors enables the use of these weapons. Controlling the illicit flow of ammunition and other explosives would have a great influence on their capabilities, mainly due to the fact that it is difficult to produce them in the field. One difference in handling ammunition and other explosives, in comparison to small arms and light weapons, lies in the special regulations concerning safety of transportation (by air, sea and land) and its storage (International Civil Aviation and International Maritime Organization regulations). Some difficulties in detecting illicit activities involving explosives may be attributable to the fact that they constitute dual-use material. The production, storage and transfer of military-grade explosives need to be under appropriate government control. Dual-use explosives (for, e.g., mining, building activities) are more difficult to control, and government control may also be complicated by the fact that explosives are difficult to trace. Some types of explosives are easy to produce illegally and find widespread use in conflicts as improvised explosive devices (IEDs).

III. Identification and evaluation of options/solutions

33. The multifaceted scope and nature of the problem of the illicit trafficking and circulation and excessive and destabilizing accumulations and flows of small arms and light weapons implies that effective international responses must involve a wide range of measures and problem-solving approaches to address each of the factors and problems that need to be addressed. The 1997 and 1999 reports of the United Nations groups of experts included important recommendations for prevention and reduction measures, subsequently endorsed by the General Assembly, addressed to States, the United Nations and other international and regional organizations. For the purpose of the work of the present Expert Group, areas where relevant measures were recommended that relate directly to authorized manufacture and trade include:

- Illicit manufacturing, acquisition, stockpiling and transfer of small arms and light weapons;
- Strengthening of national controls on the legal manufacture, acquisition and transfer of small arms and light weapons, including in relation to law enforcement and preventing diversion to illicit or unauthorized users and purposes;
- Agreed information-exchange mechanisms, including also those between law enforcement agencies in agreed areas.

Areas with recommended complementary activities include:

- Stockpile management and safe storage;
- Collection and disposition of illicit and surplus small arms and light weapons;
- "Prohibition of unrestricted trade and private ownership of small arms and light weapons specifically designed for military purposes, such as automatic guns" (A/54/258, para. 120);
- Effective disarmament, including weapons collection and disposal, demobilization and reintegration programmes in post-conflict situations;
- Transparency and confidence-building in agreed areas;
- Improved international cooperation and coordination of national policies.

34. The 1999 report of the Group of Governmental Experts on Small Arms, endorsed by the General Assembly, included recommendations of direct relevance to the subject of the present study, in particular that "States should ensure that they have in place laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons, in order to prevent unauthorized manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients. Applications for export authorizations should be assessed according to strict national criteria that cover all categories of small arms and light weapons, including surplus or second-hand

weapons. Such legislative, regulatory or administrative measures could include the use of authenticated end-user certificates, enhanced legal and enforcement measures, as appropriate, to control arms-brokering activities, requirements to ensure that no retransfer of small arms and light weapons takes place without prior authorization of the original supplier State, and cooperation in the exchange of information on suspect financial activities. States should ensure that they exercise control over all brokering activities performed in their territory or by dealers registered in their territory, including cases in which the arms do not enter their territory" (ibid., para. 113).

35. In line with the above recommendation, and pursuant to its agreed approach and working methodology as detailed in section I.B, the Expert Group set out to identify and evaluate existing and new approaches at the national, regional and global levels.

A. Manufacturing

1. Authorized manufacturing

36. The manufacture of small arms and light weapons serves legitimate and important purposes which are recognized in the Charter of the United Nations, and in most countries is well regulated. States are responsible for ensuring effective control over the manufacture of small arms and light weapons which takes place within their jurisdiction and there is now widespread recognition that this activity should only take place within the framework of effective State regulation and control. Such a system of authorization and oversight enables States to limit diversions into the illicit market and, in conjunction with relevant national policies, will contribute to curbing excessive and destabilizing accumulations and transfers of small arms and light weapons.

37. Effective regulation and control of the production of small arms and light weapons is based on a system of laws, regulations and administrative procedures establishing a licensing regime with specified criteria as a condition of the granting of the licence, including:

- Registration on the basis of a series of criteria relating to qualifications and eligibility of the licensee (e.g., no criminal record), and ability to maintain secure facilities;
- Requirements for the security of the manufacturing facility, the type and scale of production, record-keeping, marking of weapons, etc.;
- Requirement to submit a periodic report;
- The requirement to cooperate with requests for information by the licensing authorities;
- The requirement for prompt notification to the designated authority of a divergence from a licensing condition.

In some cases State authorities, in order to strengthen governmental control over small arms and light weapons, have limited the number of authorized producers.

38. Record-keeping requires the establishment of appropriate monitoring and auditing systems. The licences authorizing the manufacture of small arms and light weapons could contain obligations to maintain comprehensive records subject to national verification and/or audit (including qualifications of the licensee, the type model, calibre or gauge, and serial number of each completed firearm manufactured and the name of the purchaser and date of sale). Administrative and/or criminal penalties help ensure adherence to the system and allow for strict and determined action on the part of law enforcement agencies.

39. The advantage of this type of system is that it enables detailed oversight and close control by the State over the manufacture of small arms and light weapons. A full-fledged registration system requires systematic record-keeping, implying significant staffing and technical requirements for proper administration, by both authorities and manufacturers. Successful enforcement of the system may be hampered by a lack of resources. In addition, States in certain regions may exercise weak de facto control over territories under their legal jurisdiction, and cultural factors may also undermine implementation.

40. The application by manufacturers of reliable markings to each small arm and light weapon as an integral part of the production process and maintenance of detailed and accurate records are necessary to enhance the capacity to trace sources and lines of supply of weapons, to identify diversion points and leakages and to help monitor weapons flows of concern. In this regard, a unique, reliable mark at an essential part of the weapon, and recoverable if

externally erased, is necessary for law enforcement purposes. The 1999 report of the Group of Governmental Experts on Small Arms recommends that "States that have not yet done so should ensure that manufacturers apply appropriate and reliable markings on small arms and light weapons as an integral part of the production process. These markings should identify the country of manufacture and also provide information that enables the national authorities of that country to identify the manufacturer and serial number, so that the authorities concerned can trace each weapon and cooperate in efforts to combat illicit arms trafficking and undesirable diversions of arms shipments" (A/54/258, para. 115). As noted in the report of the Group of Experts on the problem of ammunition and explosives, marking of military-style ammunition in lots or batches is an important measure that enables the source of manufacture to be traced back to a particular factory, shift or production run.

41. Tracing is a national responsibility. International cooperation is essential for tracing. Consistent international approaches could address the problem of tracing. Options for bringing about compatible international approaches could include mutual acknowledgement of original marking systems and a political commitment among participating States to identify elements of such a common approach. Although it is premature at the present time, at an appropriate time in the future, participating States could consider working towards the establishment of an international agreement on a tracing mechanism related to common principles of marking and record-keeping of small arms and light weapons.

42. At the national level, countries could create obligations at some level of government to maintain detailed records for the manufacture, movements and transfers for each weapon, which would constitute a key element of systems for regulation, tracing and accountability. Requirements that manufacturers submit annual reports to the national State authorities about their production activities during the previous year could provide useful information and also help Governments to assess each manufacturer's performance in relation to national policies and regulations. These records could also assist in distinguishing the illegal from the legal manufacture of weapons, and in some countries might even serve to enhance internal security. Regular auditing by the national authority might give Governments a much clearer picture of the actual size of production.

43. Such records could further provide the basis for a useful voluntary information exchange and for confidence-building measures at the bilateral, regional or global level. Information on national laws, regulations and administrative procedures could be exchanged, for example, as could details of national contact points to facilitate cooperation and consultation. Lists of authorized manufacturers and dealers might also be voluntarily exchanged, perhaps together with information on national systems of marking and summary information relating to manufactured small arms and light weapons (such as national policy overviews). Such exchanges, once agreed upon, could usefully enhance information available to national authorities and could promote confidence-building among States at the bilateral, regional or global level. Information exchange could be complemented by voluntary bilateral and/or multilateral consultation and clarification mechanisms. Any regional or international monitoring system would have to be carefully implemented so as not to infringe upon the national sovereignty of States parties.

44. Licensing of production abroad is a legitimate commercial activity, especially under the present conditions of globalization. It is also linked with national security considerations related to self-sufficiency in defence production. However, at times such production exceeds contractual limits or continues even after the expiry of the original licence. The small arms and light weapons thus produced could contribute to, and indeed have contributed to, excessive and destabilizing accumulations and transfers. Most countries require that a licence is sought for the export of controlled technology for the production of small arms and light weapons. Some also limit production in the terms of the commercial contract and do not allow re-export without prior approval. However, in some cases, in particular in the context of the cold war, production facilities have been licensed abroad without due care to excessive and destabilizing production and transfer possibilities.

45. The challenge is to restrict the possibility of irresponsible transfers from licensed production facilities without compromising the legitimate security and commercial interests that underpin such arrangements. One option is to clearly underline that licensed manufacture is subject to the authority of the

State within which the manufacture takes place, as per the considerations discussed above. Secondly, the same considerations that apply to export licensing of small arms and light weapons should also apply to the grant of permissions for licensing small arms and light weapons production abroad. In addition, States could under national export controls assure themselves that contractual obligations relating to export from such facilities obviate possibilities of uncontrolled production or transfer. Finally, the importing and exporting countries (of the licensed production facilities) could cooperate in addressing possible small arms and light weapons proliferation issues.

46. There is substantial scope for developing information exchange and transparency arrangements as confidence-building measures. This could be arranged without revealing information that might endanger national security or legitimate commercial interests, or undermine law enforcement efforts. These arrangements can be achieved through the careful definition of the types of information to be exchanged as well as through appropriate restrictions on access to exchanged information. Bilateral and international cooperation could assist in demonstrating the utility of the domestic regulation of production and the appropriate form and content of national law.

2. Illicit manufacture

47. The effectiveness of measures to regulate legitimate small arms and light weapons manufacture is increased when accompanied by complementary measures to combat and prevent illicit production. Illicit production relates to unauthorized manufacture within authorized facilities as well as to unauthorized manufacture outside authorized facilities, and includes:

(a) Non-declared output;

(b) Output in excess of the authorized volume;

(c) Production of unmarked or inadequately marked weapons;

(d) The diversion of non-conforming output;

(e) The diversion or loss of arms rejected and designated for destruction;

(f) Unauthorized assembly of imported spare parts.[5]

48. Control over the manufacture of small arms and light weapons is complicated by the existence of craft manufacture, and particularly by the relative lack of control or data on such craft production in numerous countries. In principle, craft manufacture does not pose any special challenge as long as it is authorized and as long as it is devoted to the production of weapons for museums, ceremonial, hunting, sporting and related purposes. However, in some regions such manufacture is beyond government control and extends to sophisticated weapons that are sold or transferred without State control. In some countries, non-State actors or insurgents may have significant production capability.

49. Compliance with the procedures for authorized manufacturing will be facilitated by appropriate legal sanctions imposed upon anyone who engages in weapons manufacturing without required authorization. Criminal sanctions, which require a high evidentiary standard, might be considered exclusively for the most serious violations. Administrative penalties could be available for minor offences.

50. The Expert Group took note of the fact that it did not have before it systematic information, particularly primary source data, on small arms manufacturers. In respect of illicit manufacture, the Group was of the view that the nature and extent of the problem could most usefully be assessed in specific regional contexts. States could also consider compiling information on craft manufacture, including illicit production. In that regard, the Group noted in particular that case studies would have been of considerable utility in assessing the extent of the problem of unauthorized/illicit manufacture in small workshops, and by backyard manufacturers and other itinerant producers of small arms. The Group believes that the undertaking of such case studies, without jeopardizing commercial confidentiality or national security, could be an important follow-on activity of the present study. Some research institutes collect and store primary source data on small arms manufacturers. Some of that information could assist States in gaining better insight into this problem.

51. National registers of offenders could be established to keep track of individuals and companies convicted of violations of the relevant laws. Such information would assist in implementing and enforcing relevant national laws and regulations and could facilitate international cooperation in enforcement.

B. Stockpiles and surplus weapons

52. Stockpiles and surplus weapons might be a source for illicit trade in some cases. States are responsible for ensuring proper control over State-owned stockpiles and designated surplus weapons as well as over stockpiles and surpluses held by persons/entities under their effective jurisdiction. If holdings of stockpiles by military and internal security forces are only maintained for legitimate security needs, there are fewer opportunities for diversion. Responsible storage practices and safeguarded destruction also help to ensure that no weapons are diverted and end up in the illegal sector. Given the range of difficulties in securing surpluses, one effective way of eliminating the risk of diversion or loss may be destruction.

53. Appropriate stockpile management and controls over the transfer of surplus weapons to Governments that manage their deployed and stockpiled weapons responsibly will help reduce theft and other diversions of weapons. The regular reassessment of national stocks (particularly after defence reviews and modernization decisions) could help State authorities to identify small arms and light weapons that are surplus to their national requirements.

54. Accounting, retrieval, marking and destruction, as appropriate, of illicit small arms and light weapons stockpiles from past transfer leakages, weapons caches, unauthorized manufacture, etc., contribute to more effective government control over illicit stockpiles.

55. States alone define on the basis of their national security requirements which weapons are designated surplus. Measures to deal with legal surplus weapons held in storage, awaiting decommissioning, demilitarization, civilianization, irreversible deactivation and destruction, include appropriate physical and technical procedures. These measures can help to prevent loss through theft, corruption or neglect. Any State upgrading or replacing existing stocks of small arms and light weapons could consider destroying the legally held surplus thus created. States that decide to export or transfer any surplus small arms and light weapons, not designated for destruction should follow the same stringent export control and authorization procedures that are followed for the export of fresh small arms and light weapons production from their territory.

56. There are several additional options for limiting the excessive and destabilizing accumulation and transfer of small arms and light weapons from stockpiles and surpluses. States might consider adopting, as a matter of national policy, the following:

(a) The destruction of all illicitly trafficked weapons that are seized, collected or confiscated (subject to the requirements for criminal prosecutions);

(b) The marking or destruction of all unmarked or inadequately marked weapons.

57. Adequate record-keeping at the national level relating to stockpiling and transfer is a key element for tracing, detecting and preventing the diversion or loss of small arms and light weapons, and can also assist in distinguishing illegal from legal stockpiles of weaponry. Regular inventory-taking may give Governments a much clearer picture of their deployed, deactivated or missing equipment.

58. Bilateral, regional and global assistance (financial and technical aid) to States in the area of record-keeping, weapons collection and controlling and destroying illicit surplus small arms and light weapons will improve State capacity and help reduce the circulation and excessive accumulation of this weaponry. International cooperation and assistance may support the improvement of basic police and customs services to combat the illicit manufacturing and trade of small arms and light weapons. The collection of illicit surplus weapons or weapons in uncontrolled circulation can help lower the level of violence and improve human security.

C. Trade, including brokering and related activities

1. Trade

59. Legal trade and transfer of arms is and will remain in the foreseeable future an essential means of meeting States' security needs and concerns. The transfer of small arms and light weapons internationally is often facilitated by arms brokers, who provide an important and lawful service for both the seller and the buyer. However, in some areas, by exploiting existing legislative and administrative gaps and unregulated grey areas, they facilitate illicit deals in violation of international norms and national laws and regulations governing these activities. Effective

national systems to control the export, import, transfer, transit and retransfer of small arms and light weapons and associated ammunition and explosives are a prerequisite to successfully countering these challenges. Customs authorities play an essential role in the enforcement of export, import and transit controls. Customs authorities therefore will need sufficient resources in order to remain vigilant and efficient in enforcing controls of small arms and light weapons.

60. The Expert Group has studied ways to restrict the trade in small arms and light weapons to States and State-authorized dealers and to control through law and administrative regulations small arms and light weapons dealers. At the minimum States could require specific authorization for dealing in small arms and light weapons and require dealers to maintain records of small arms and light weapons in stock or small arms and light weapons sold. Dealers should also be required to have small arms and light weapons marked at the stage of import, if markings are inadequate or non-existent. As for international trade, States could establish export and import control regimes, based on trade documentation resistant to fraud and misuse. There is great scope for improving documentation required for export and import licences and end-user certification and cross-referencing them with transportation and other relevant documentation. In this regard, national perspectives in the area of best practices on trade documentation could be exchanged at the regional and international levels.

61. At a broader level voluntary restraint and greater responsibility in small arms and light weapons transfers could be pursued as well as consideration of voluntary information-sharing as appropriate, even though the voluntary provision of relevant information raises for many States a number of serious concerns that would have to be adequately addressed. States should have laws that enable them to enforce United Nations Security Council embargoes. States should also consider restraint in transfers to conflict-prone regions not subject to Security Council embargoes as well as to destinations without end-user certification or non-retransfer arrangements. Restrictions on small arms and light weapons transfers sought to be effected for reasons of national security are problematic. However, in the light of past experience, Governments could carefully evaluate the possibilities for diversion and retrieval as well as the possible impact on regional and international security before deciding upon such transfers. Although regional codes of conduct have embraced more wide-ranging guidelines for transfers, it is not realistic at this stage to envisage a global statement of best practices or a global code of conduct. This issue involves differing perspectives on State sovereignty and the discretionary nature of the criteria used. In this connection, the Expert Group noted the pertinence of the 1991 United Nations Disarmament Commission guidelines on international arms transfers.[3]

62. A commitment by Governments not to permit the transfer of inadequately marked weapons could be an important element of an effective international tracing arrangement. Marking at the stage of import could further assist in the rapid tracing of weapons. It would allow enforcement agencies to go to the last known importing State without having to revert to the original manufacturer, who would only be able to supply information on the original customer, which may be several steps removed from the last importing State. While there are technical and cost considerations to be taken into account in adopting such an approach, neither should be sufficient to render such an approach impractical.

63. In order to facilitate international cooperation on tracing sources of illicit supplies of small arms and light weapons, national focal points could be established. The focal points would work towards achieving national coherence and effectiveness and also help to promote international cooperation in curbing and preventing illicit trafficking and the illicit circulation of small arms and light weapons.

64. A small arms and light weapons register could be established at the national level in order to assist in information-gathering and information-sharing. States could submit to their respective national registers, for example, details of the type and models of small arms and light weapons transferred, the quantity, supplier and recipient country. In addition, they could include information on the manufacture, dealers, brokers, including transportation agents and financial transactions. One option could be to extend this register to the regional level. Prospects for such registers appear more promising in certain regional contexts, where agreements have been reached among States participating in their respective regional organizations to establish a small arms and light weapons register on a voluntary basis. A regional

register could be more specific and address problems of weapons proliferation or control in that region. Nonetheless, such registers are only useful when a sufficient number of States subscribe to a particular register. The option of a United Nations register of small arms and light weapons was discussed. However, significant opposition continues to exist to a global register on the basis that it is premature and the provision of such sensitive information could undermine, not enhance, national security.

2. Brokering and related activities

65. The legal transfer of small arms and light weapons internationally is often facilitated by arms brokers. Arms brokering and its related activities (including the arrangement of financing and transportation) are an intrinsic part of the legal trade in small arms and light weapons. However, arms brokering, which is a largely unregulated activity, can also take place in grey areas between legal and illegal dealings. Some brokers deliberately exploit inconsistencies and gaps in national laws and administrative procedures to circumvent controls, and arrange transfers involving States where export control procedures and enforcement are weak. Some States prohibit brokering activities of their nationals within their territory. Many States do not have laws and regulations in place to control brokering and related activities. Furthermore, attention has recently been drawn to the role that unregulated brokering activities have played in circumventing Security Council arms embargoes, and relevant Security Council expert panels have called upon States to ensure the effective regulation of such activities.

66. In order to be able to deal effectively with the challenges posed by the problems described above, States have at the minimum to ensure:

- Effective exercise of control within the limits of their territorial jurisdiction, on all arms trade activities, including brokering and related activities;
- A degree of international cooperation with a view to identifying and taking adequate measures against abuses and violations in this area, including in cases where their nationals are involved in problematic brokering or related activities.

In this context, national registers of offenders could be established to keep track of individuals and companies convicted of violations of the relevant laws and regulations.

67. In developing regulations and controls on brokering and related activities, States have several options to consider, and there are different mechanisms or measures that can be deployed.

(a) **Registration**. Among the regulatory options open to States is a registration requirement. Some States that already have controls on arms brokering and related activities operate a registration scheme, which usually applies to exporters as well as brokers. There are two basic models for such a register. The first would act as a source of information to Governments (and could be used for information-sharing with other Governments or bodies), but inclusion in such a register does not imply approval by national authorities, and there may be little provision for excluding brokers or others that provide the necessary registration information. The alternative would be a register that acted as a gateway to the exercise of the right to export or trade with eligibility conditions and from which exporters or brokers could be "struck off". The second alternative involves more stringent assessment but may present difficulties in relation to human rights legislation in certain jurisdictions, as may publication of the register. An alternative or complementary option would be certification in accordance with the procedures and methods of the International Organization for Standardization (ISO). Both registration and certification could be time limited, so that brokers would have to re-apply periodically.

(b) **Licensing**. Combined with a registration or certification scheme it would be necessary to license transactions in order to ensure proper control of brokering activities. Under either option for registration, a broker would not be able to apply for a licence until the licensing authority was in receipt of certain basic details about his business. A licence application from a broker for small arms and light weapons from one foreign country to another would be treated in much the same way as a licence application from an exporter.

(c) **Disclosure requirement**. To obtain greater knowledge of the intermediaries in deals involving small arms and light weapons, States could consider

requiring applicants for export licences to provide full disclosure of any brokering agents involved. Administrative and criminal penalties could be provided as appropriate for failure to disclose relevant information.

68. The chart below describes a combination of provisions that may be required for licensing brokering and related activities based on location. It shows how registration, licensing and export control can be managed by various countries involved in the same operation.

Impact of location on control of brokering

		Country of residence or establishment of the broker	*Country where the main brokering operation occurs (conclusion of the deal, contract)*	*Country of the seller, export*	*Country of the buyer, import*	*Control*
	Case 1	A Registration	A (2) Brokering licence (global or individual)	A Export licence	D Import licence and end-user certificate	Full control of brokering and export operations by country A
	Case 2	A Registration	A (2) Brokering licence (global or individual)	C Export licence	D Import licence and end-user certificate	Control of brokering operations by A and control of export by C. Possibility of exchanging information between C and A
Administrative regime applied by States A, B, C and D	Case 3	A Registration	B (1) (2) Brokering licence Often prior to registration in B Or often information given on the broker by A (individual licence if the broker is not registered in B)	B Export licence	D Import licence and end-user certificate	Control of brokering and export operations by B

	Country of residence or establishment of the broker	*Country where the main brokering operation occurs (conclusion of the deal, contract)*	*Country of the seller, export*	*Country of the buyer, import*	*Control*
Case 4	A Registration	B (1) (2) Same as above	C Export licence	D Import licence and end-user certificate	There is a need for an exchange of information between A, B and C, especially if the seller discloses the information on the broker to C

Notes

(1) Issuing a licence in a country where the broker is not registered raises several problems, because registration should be a prior condition of licensing, so either country B recognizes the registration of the broker in country A, or B asks the broker to register before issuing the licence. Some States might consider that applying for a licence implies simultaneous registration without special procedures.

(2) The effect of a licence towards third countries must also be considered. A brokering operation is often scattered in several countries. There could be information given on the licence if requested by those third countries. In case of territorial application of the law, the licence can have effects only in the limits of the jurisdiction of the State, but the State of registration might want to know about all the operations in which its registered brokers are engaged, even in third countries. Therefore the registering State (A) might require a licence in any case, even if the deal is achieved in a third country.

Case 1: The broker is established and making the deal in country A; the goods that are the subject of the deal are exported from country A to country D.

Case 2: The broker is established and making the deal in country A; the goods that are the subject of the deal are exported from country C to country D.

Case 3: The broker is established in country A, and he is making the deal in country B; the goods are exported from country B to country D.

Case 4: The broker is established in country A and B, he is making the deal in country B; the goods are exported from country C to country D.

69. Generally, there are two broad options for controlling brokering and related activities that may be followed:

(a) To adopt controls that apply to all brokering and related activities carried out within the territory of the State and also by its citizens or by residents and companies established in that State regardless of where the brokering activity took place;

(b) To adopt controls that apply only to brokering activities carried out within a territorial jurisdiction of the State.

Under (b) controls could easily be evaded by residents crossing borders to neighbouring States with less rigorous controls or enforcement, conducting business there, and returning as soon as the business has been completed. Option (a) could apply to all that were resident in a country irrespective of nationality. There are various definitions of residency in international law, including residence, habitual residence and domicile, the first of which is the broadest. If option (a) were followed, it would be useful to reach a common understanding of the definition of residency to be adopted.

70. There are a number of options for the regulation of legal brokering:

(a) Individual licensing of every brokering deal and related activity;

(b) Individual licensing of an agreed set of brokering and related activities. This implies an understanding of which types of brokering and related

activities require special attention. There are options for including or excluding marketing, promotion, advertising and similar information-related activities. There are diverse national approaches. The core brokering activities could be considered to be any key mediation role. It is difficult to be precise about all the detailed activities that should be covered, or when a licence would be required. Only with increased national experience in implementing and enforcing brokering regulations will it be possible to bring greater precision to the identification of core brokering activities;

(c) A degree of licensing flexibility; this would permit States some discretion and might be used for dealings involving close allies or collaborative defence projects. A licence would be granted for a given period to an individual broker, permitting deals concerning supplies of defined small arms and light weapons to a number of destinations. States would nevertheless still be expected to subject dealings to an appropriate level of control and review and would penalize infringement of licensing conditions.

71. Licensing of brokering and related activities raises the issue of the geographical scope of the licensing regime, as set out in the above chart. An option exists for States to require their nationals, whether residing or not in their territory, to act in compliance with national brokering legislation. This approach involves the extraterritorial application of the brokering law. Such a law would therefore cover nationals engaging in illicit brokering activities in third countries with weak national legislation. Many States are reluctant to endorse or adopt such powers, and there are significant practical problems with enforcement. However, in certain areas of special international concern (e.g., sex tourism and sexual exploitation of children as well as binding United Nations arms embargoes), extraterritorial jurisdiction has been accepted by the international community as a necessary and appropriate means of combating such practices. These legal obligations could also act as a precedent for extending extraterritorial controls to the area of arms brokering and related activities.

72. **Transportation.** Related activities associated with brokering include arranging the transport of arms and the involvement in actual transport (ownership, leasing or operation of planes/ships, etc.). Of those States that already have controls on brokering, most do not currently go so far as to control these activities unless the provider of one or more of these services is also the principal in the brokering deal (as opposed to a service provider to the broker). However, the non-regulation of these activities can lead to the transfer of arms into regions of conflict. Controls on the transport of arms could be integrated into controls on arms brokering. Alternatively, distinct controls could apply to transport. Effective customs control of entry/exit checkpoints of States acquires particular importance in this context.

73. The recent reports to the Security Council on violations of the UNITA and Sierra Leone sanctions highlighted the role that air transport can play in the circumvention of arms embargoes. The simplest approach to this problem would be for States to prohibit and penalize those under their jurisdiction that take part in the transport of arms to destinations and entities subject to Security Council arms embargoes. It would add no burden to the licensing process.

74. While such an approach would enable States to strengthen the enforcement of United Nations arms embargoes, it would not enable them to exercise control on the transport of arms by legal persons under their jurisdiction to other destinations, including those where there was a real or potential threat of the build-up of excessive and destabilizing accumulations of small arms and light weapons. To achieve some measure of control over these activities, one approach could be to impose a licensing obligation on the shipment of arms by air. States might decide to control shipments originating in or passing through their territory. Alternatively, or in addition, they might decide to target the transport of arms by legal persons under their jurisdiction between destinations in third States. Such a procedure would necessitate the imposition of extraterritorial controls but might prove to be useful in detection or in enabling a State to prosecute those who had undertaken acts in contravention of its laws. Targeting shipments made from or via their own territory would require an additional set of controls to supplement normal export licensing procedures. Such dual licensing would add to the bureaucratic burden but might not necessarily do much to improve the detection of illicit shipments.

75. Ideally, the company or individual ultimately involved in the physical shipment of the arms would be responsible for applying for a licence, although the level of subcontracting in this area could perhaps provide the cover for evasion of responsibility by

airfreight companies. To prevent instances of multiple licensing the requirement to apply for a transport licence might be imposed only in instances where the shipment had not already been approved by a State through the granting of a brokerage licence. However, it should be noted that the airfreight industry works to very short deadlines. It is not uncommon for details of ad hoc charters (the mode most likely to be used for larger arms shipments) to be sent to aviation authorities for approval with less than two days' notice. Most export licensing authorities do not have the procedures in place to be able to work to such short deadlines. If a State imposed such a requirement on its shipping agents and airlines without first addressing the question of the time taken to make licensing decisions, it would effectively be ruling them out of participation in the transport of arms.

76. An alternative approach, which would provide some information on participation in the transport of arms, would be to impose a requirement on a broker to disclose details of agents, airlines and routes to be used. At the licence application stage a broker would, in many cases, be unlikely to be able to provide such detailed information. However, a State might adopt a procedure for indicating approval in principle for a particular deal, with a licence not being issued until all relevant information had been provided. Alternatively, a condition could be added to the licence requiring a broker to provide such information prior to the shipment taking place. If the information was not received by the licensing authority, the broker would have committed an offence. This disclosure exercise would of course not bring to light those deals where a State's shipping agents/airlines participated but a broker under their jurisdiction did not.

77. Another approach would be to encourage the adoption of a code of conduct by the industry. A code could set out undertakings to provide comprehensive and accurate information on the cargo and flight plans in the relevant documentation that accompanied shipments of arms. It could also include an undertaking not to ship arms to destinations where there was a risk that they could be used in conflict, etc. However, asking industry to make the sort of judgements that are normally the province of States would need further consideration. The other problem with this approach is that such a voluntary agreement would have a limited impact on those routinely engaged in the illicit shipment of arms by air.

78. Another alternative would be to scrutinize closely international agreements and domestic legislation already available to control the airline industry. The lucrative nature of illegal air shipments of small arms and light weapons does lure some aircraft owners and agents into filing false flight plans and flying small arms to hot spots. To combat this practice there is a need for authorities in the exporting State, or at stops en route, to verify flight plans, in particular those of cargo aircraft on ad hoc charters. The authorities in the exporting State should be able to request a copy of the landing permit or certificate from the authorities in the importing State indicated in end-user documentation. Consideration could be given to encouraging, and in some instances assisting, national administrations in enforcing current civil aviation regulations more effectively. For instance, States could ensure that procedures for issuing certificates of airworthiness for individual aircraft on civil aircraft registers, procedures for issuing air operator certificates to airlines, regulations on carriage of dangerous goods and requirements for insurance were all stringently enforced.

79. Lastly, in addition to, or instead of, the licensing of transportation agents (as part of brokering activities), an internationally agreed transportation regulation, similar to transportation agreements for the shipping of toxic waste and hazardous products, might help to prevent the diversion of small arms and light weapons while in transit.

80. Shipment of arms by sea raises a different set of problems. The industry has traditionally been less closely regulated than the air transport industry. The measure discussed in paragraph 79 could be adopted or the feasibility of introducing regulations under the auspices of IMO could be explored to control illicit brokering through free ports and by those ships using flags of convenience.

81. **Finance.** Special arrangements (such as the registration and licensing of financial agents or the disclosure of documentation associated with the financing of arms deals) might be useful in the control of the financing of arms transfers. Just as the option exists in the regulation of dealers and transportation agents to require full disclosure of documentation as a condition of their registered individual brokering licence, this could be applied to financial transactions as well. However, it is problematic and difficult to require licences for individual banking transactions.

Another option is examining special investigative powers given by States to their law enforcement agencies. The regulation in force to combat the laundering of illegal drug proceeds can similarly be applied for the financing of illicit small arms and light weapons transactions and the laundering of illegal proceeds of those transactions. Relevant organizations, such as the International Criminal Police Organization — Interpol or EUROPOL could cooperate closely in the identification of the groups and individuals engaged in financing illicit trafficking in small arms and light weapons. One option could be the establishment of financial information units (FIUs) or centres for financial data processing at a national level. Furthermore, efforts could be made to promote the exchange of information between the established FIUs at a regional and international level. Eventually all exchanges of information could take place between the national FIU and the national focal points.

82. There is a further need for all States to consider ways to avoid gaps and inconsistencies in national approaches that may undermine the effectiveness of controls, by identifying good practices and developing common approaches or agreed minimum standards to overcome the problem of extraterritoriality. Common principles could be sought on registration procedures, the content of licences and definition of offences. Exchange of information could be organized. One way to promote the adoption of such national controls on brokering and related activities and to achieve the necessary consistency and agreed minimum standards of such national controls is through agreement by States to agreed approaches through a political document such as a statement of best practice, which States would agree to follow when developing legislation and controls in this area.

83. This option would not impose a legally binding duty on all States to introduce controls and might therefore stand a greater chance of early adoption. However, as it would not legally bind States to introduce controls, it might lead to less stringent implementation. The negotiation by States of a legally binding international instrument, which establishes the norms and principles that States agree they should adopt, was discussed. However, the lack of sufficient national experience with brokering regulation, together with the variety of national approaches to brokering control and the lack of agreed criteria, might make it difficult to achieve a legally binding agreement at this time. The regional level might be the most promising to implement international action in the short term. At that level there might be mutual recognition of registered brokers and brokering licences. Whichever approach was adopted by States, its effectiveness would be enhanced by well-defined undertakings to which States would agree and the existence of adequate support mechanisms.

84. The measures identified by the Expert Group can best be implemented in the context of well-functioning police, judiciary, military forces and customs authorities.

85. The Expert Group noted that the necessary resources need to be made available nationally and through appropriate programmes for international cooperation and assistance to sustain proper controls on the manufacture, circulation, trade and transfer of small arms and light weapons.

Notes

[1] *United Nations International Study on Firearm Regulation* (United Nations publication, Sales No. E.98.IV.2).

[2] The Group noted with regard to the concept of excessive and destabilizing accumulations of small arms and light weapons the report of the United Nations Panel of Governmental Experts on Small Arms (A/52/298, para. 37).

[3] *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 42* (A/46/42), annex I, chap. III.

[4] Ibid., *Fifty-fourth Session, Supplement No. 42* (A/54/42), annex III.

[5] "Non-declared output" relates to production that is not declared, contrary to such requirements. "Non-conforming output" relates to production that does not meet the required standard. "Arms designated for destruction" relates to the fact that recently some manufacturers have been asked by their Governments to carry out feasibility testing on the commercial viability of destroying weapons and recycling the materials.

Annex I

Clarification of key terms

In seeking to clarify the meanings of key terms used in its study, the Expert Group drew, where appropriate, on definitions agreed in United Nations documents. In those cases where internationally accepted definitions have not yet been established, the Group reached a common understanding of those terms listed below.

Ammunition and explosives form an integral part of small arms and light weapons used in conflicts, and include cartridges (rounds) for small arms, shells and missiles for light weapons, anti-personnel and anti-tank hand grenades, landmines, explosives, and mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems (A/54/258, note 5). See also **Small arms and light weapons**.

Authorization. A State authorization consists of documentation in the form of a written permission issued by relevant State authorities that authorizes production, transfer of production rights, possession, trade, including brokering and transportation of small arms and light weapons, ammunition, and related or controlled materials, know-how and technologies. In the area of trade, such documentation normally specifies the quantities and types of controlled items that may be exported or imported and their destination or origin, and includes restrictions and regulations concerning end-use and end-users. A "**negotiation permit**" is a document issued by relevant State authorities that authorizes persons or companies to negotiate a deal to transfer or trade in small arms and light weapons, ammunition, explosives and associated controlled technologies.

A **bill of lading** is a contract document between an exporter, an importer and the carrier. It is a negotiable document and whoever submits the original document to the carrier is considered the importer/owner. A **Landing permit/certificate** is issued by an authority or agency in the importing State confirming that the goods/consignments have been received in the importing State.

Brokering and related activities. Individuals or companies acting as intermediaries between a supplier and a user may be performing one or more of the following roles: dealer, agent acting on behalf of manufacturers, suppliers or recipients, broker, transportation agent, or financial agent. **Dealers** buy and sell quantities of arms and associated items according to the demand of users. **Agents** acting on behalf of manufacturers, suppliers or recipients have a mandate to represent one of them and to conclude a contract in the name of that person. **Brokers** bring together a supplier and a recipient and arrange and facilitate arms deals so as to benefit materially from the deals without necessarily taking ownership of the arms or acting on behalf of one of the two parties. For the purposes of the present report, **transportation agents** are agents involved in arrangements for the transportation of the arms and associated goods, and include shipping agents and brokers, freight forwarders and charterers.

An **end-use certificate** is documentation which prescribes the use of material intended for transfer. An **end-user certificate/statement** is documentation used to verify the recipient of a transfer. An **international import certificate** is a document used to guarantee that the importer does not intend to divert, re-export or trans-ship imported material.

The terms "**excessive**" and "**destabilizing**" are relative and exist only in the context of specific regions, subregions or States. The mere accumulation of weapons is not a sufficient criterion by which to define an accumulation of weapons as excessive or destabilizing, since large numbers of weapons that are under the strict and effective control of a responsible State do not necessarily lead to violence. Conversely, a small number of weapons can be destabilizing under certain conditions (A/52/298, para. 36).

Financial transactions include all banking and related activities to arrange for the payment of the purchase of small arms and light weapons, their parts and components, ammunition and explosives, technologies and services. Payments may include credit arrangements, payment in non-financial transactions like resources; they may also be made in the form of barter.

Grey markets operate at the juncture between licit transfers and illicit trafficking. They comprise the following types of transactions in small arms and light weapons-related ammunition and/or explosives:

- Re-export of materials previously purchased legitimately;
- Triangulation of materials in contravention of end-user certificates (diversion of goods from the authorized destination to a third country);
- Commercialization by a broker who coordinates the operation between a supplier and a recipient (be it a State or a sub-national/transnational group).

Illicit trafficking in small arms and light weapons is understood to cover those international transfers in small arms and light weapons, their parts and components and ammunition, which are unauthorized or contrary to the laws of any of the States involved, and/or contrary to international law. Regulations or limitations on arms transfers can be found in national laws, binding international arrangements or treaties, and in binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations. **Illicit circulation** of small arms and light weapons refers to weapons in this category that are possessed or traded by individuals and non-State actors that are not authorized to possess, carry, trade or use them.

Licensed production abroad is a commercial arrangement entered into by a company that allows for the transfer of proprietorial rights (such as use of technology, trademarks, production equipment and processes) for the purpose of the manufacture or production of small arms and light weapons, which if they were exported directly from that country would be subject to export control. The company granting the licensed production might grant the right to use its name and any registered trademarks but need not necessarily do so. Similarly, it might also provide technical services, production equipment, components, sales and distribution networks and general business management techniques. The licensee might enter into a joint venture with the company granting the production rights. It might be a subsidiary of the company licensing production or an associated company, or the company granting the rights might have no legal relationship with the licensee other than entering into a commercial agreement in return for royalties.

Manufacturers are those that design, develop, produce, produce under licence, assemble, repair, maintain or modify small arms and light weapons (their parts and components) and ammunition and explosives.

Manufacturing consists of the design, development, production, assembly, licensed production and sublicensing, repair, maintenance or modification (including refurbishing and cannibalization) of small arms and light weapons, their parts and components and ammunition. **Illicit manufacturing** refers to manufacturing: (a) from parts and components illicitly trafficked; (b) without a licence or authorization from a competent authority of the State in which the manufacture or assembly takes place; or (c) without marking, with inadequate marking or with duplicated or falsified marking of small arms or light weapons at the time of manufacture.

Small arms and light weapons. The Expert Group followed the practice of the Panel of Governmental Experts on Small Arms (A/52/298) and the Group of Governmental Experts on Small Arms (A54/258). The small arms and light weapons which are of main concern for the purposes of the present report are those which are manufactured to military specifications for use as lethal instruments of war. Small arms and light weapons are used by all armed forces, including internal security forces, for, inter alia, self-protection or self-defence, close- or short-range combat, direct or indirect fire, and against tanks or aircraft at relatively short distances. Broadly speaking, small arms are those weapons designed for personal use, and light weapons are those designed for use by several persons serving as a crew. Based on this broad definition and on an assessment of weapons actually in conflicts being dealt with by the United Nations, the weapons addressed in the present report are categorized as follows: The category of small arms includes revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns. Light weapons include heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of calibres of less than 100mm (A/52/298, paras. 24-26). **Parts and components** are defined as any element or replacement element specifically designed for a small weapon or a piece of light weapon and essential to its operation. See also **Ammunition and explosives**.

Stockpiles are understood to be weapons held by military and police forces in storage, for deployment in the forces, for sale or decommissioning, as well as those weapons held by appropriately authorized non-State actors. **Holdings** include all weapons held by the armed and police forces, including those deployed and in storage.

Surplus weapons refers to serviceable and unserviceable small arms and light weapons held in stockpiles by military, police and other government forces, and the illicit weapons seized by them, which they no longer need. States alone decide which weapons are considered surplus, based on their legitimate security needs.

Technologies are understood to be technical data and information, software, blueprints and other know-how and machinery which is required or is being developed for the design, development, manufacture, assembly, operation, repair, testing, maintenance or modification of small arms and light weapons.

Annex II

List of acronyms

EAPC	Euro-Atlantic Partnership Council
ECOWAS	Economic Community of West African States
EUROPOL	European Police Office
FIU	financial information unit
IED	improvised explosives device
IMO	International Maritime Organization
ISO	International Organization for Standardization
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OAU	Organization of African Unity
OAS	Organization of American States
OSCE	Organization for Security and Cooperation in Europe
UNITA	União Nacional para a Independência Total de Angola

Annex III

[Original: English/French]

Documents made available to the Expert Group*

Non-United Nations documents

- Opening statement by the Under-Secretary-General for Disarmament Affairs, Mr. Jayantha Dhanapala.
- Statement of welcome by Ambassador Peggy Mason, Chair of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V, entitled "Small arms".
- Draft agenda.
- Draft programme of work.
- Brian Wood and Johan Peleman, "The Arms Fixers: Controlling the Brokers and Shipping Agents", a joint report by BASIC, NISAT and PRIO, BASIC Research Report 99.3/PRIO Report 3/99.
- "State Authorization and Inter-State Information Sharing Concerning Small Arms Manufacturers, Dealers and Brokers", James Coflin, International Security Research and Outreach Programme, Department of Foreign Affairs and International Trade, Government of Canada, February 1999.*
- CICAD Model Regulations, OAS document OEA/SER.L/XIV.2.22, 5 November 1997.
- "Chart V: The Complete Chain of Small Arms and Light Weapons Proliferation" (Mr. Gill).
- Conference discussion summary report, "Smart Sanctions, The Next Step: Arms Embargoes and Travel Sanctions — Improving Their Effectiveness", First Expert Seminar, Bonn, 21-23 November 1999.
- Chairman's report, second Interlaken Seminar on Targeting United Nations Financial Sanctions, 29-31 March 1999.
- Chairman's report, Workshop on small arms monitoring and control, 22-23 November 1999, Geneva (yellow booklet).
- "US Code Annotated, Title 22. Foreign Relations and Intercourse, Chapter 39 — Arms Export Control, Subchapter III — Military Export Controls" (Ms. Baker).
- "International Traffic in Arms Regulations, Part 129 — Registration and Licensing of Brokers", January 1998 (Ms. Baker).
- "Small Arms Brokering — A Challenge to Controllers", Norwegian discussion paper (Mr. Bernhardsen).

* This list is being circulated in the languages of submission only.

- "National Register of Arms, Ministry of Defence, Presidency of the Nation" (Mr. Siderakis).

- "Small Arms Brokering: Impact, Options for Controls and Regulations", James Coflin, International Security Research and Outreach Programme, International Security Bureau, Department of Foreign Affairs and International Trade, Government of Canada, May 2000[b] (Ms. Mason).

- "Trends in Small Arms and Light Weapons Development: Non-Proliferation and Arms Control Dimensions", Major (Rt'd) David Declerq, International Security Research and Outreach Programme, Non-Proliferation, Arms Control and Disarmament Division, Department of Foreign Affairs and International Trade, Government of Canada, October 1999[c] (Ms. Mason).

- Draft contact list of the members of the Group of Experts.

- "Regulation of Foreign Military Assistance Act", 1998, *Government Gazette*, Republic of South Africa (Mr. Shaikh).

- Declaration on Small Arms and Light Weapons (SUM.DEL/11/99/Rev.1), Stability Pact for South-Eastern Europe (Mr. Sterk).

- Regional Conference on Export Controls, Sofia, 14-15 December 1999 (Mr. Sterk).

- "Firearms Manufacturing Community Recommendations regarding Marking Issues: A Paper Presented by the World Forum on the Future of Sport Shooting Activities", Workshop on Small Arms Monitoring and Control, 22-23 November 1999, Geneva.

- Revised draft contact list of the members of the Group of Experts.

- Revised draft outline of the study (19 May 2000/REV 2, 9:33 19/05/00).

- List of documents distributed during the 15-19 May 2000 session of the Group of Experts.

- Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (to appear as General Assembly document A/54/860).

- Elements of the current Bulgarian legislation which form the legal framework for the secure production and storage of arms (including small arms and light weapons) and dual-use goods on the territory of the Republic of Bulgaria (in chronological order) (Mr. Sterk).

- Dual-Use and Arms Licensing System in the Republic of Bulgaria (Mr. Sterk).

- Outline of Bulgarian Export Control Legislation and Institutional Arrangements regarding Foreign Trade in Arms and Dual-Use Goods and Technologies (Mr. Sterk).

- Republic of Bulgaria, Decree No. 38 of 6 March 1996 for adoption of the Regulation on implementation of the Law on control of the foreign trade activity in arms and dual-use goods and technologies and for amendment of legal acts of the Council of Ministers (Mr. Sterk).

- Republic of Bulgaria, Law on the Control of Foreign Trade Activity in Arms and in Dual-Use Goods and Technologies (Mr. Sterk).
- Comments and Suggestions Related to the Elaboration of the First Draft of the Report (Mr. Sterk).
- Republic of Kenya Firearms Act (Cap 114), Kenya Revenue Authority (Mr. Miyumo).
- Identification and Evaluation of Options (existing and new), Kenya Revenue Authority (Mr. Miyumo).
- An analysis of Polish regulations restricting arms production and trade to State-licensed entities (Mr. Wyganowski).
- Export Controls in Poland, Ministry of Foreign Affairs, Republic of Poland (Mr. Wyganowski).
- 1026 Act of 11 December 1997 on administering the foreign exchange of goods and services and a special exchange (source of original document: *The Official Journal of Poland*) (Mr. Wyganowski).
- Comments and Drafting Suggestions on Draft Report (Mr. Gill).
- Act of 18 December 1987 relating to Control of the Export of Strategic Goods, Services, Technology, etc. (Mr. Bernhardsen).
- Regulations of 10 January 1989 relating to the Implementation of Control of the Goods, Services and Technology, laid down by the Ministry of Foreign Affairs, as subsequently amended (Mr. Bernhardsen).
- Act No. 1 of 9 June 1961 relating to Firearms and Ammunition (Mr. Bernhardsen).
- Federal Firearms Regulations Reference Guide (2000) (Ms. Baker).
- Commerce in Firearms in the United States (Ms. Baker).
- Fact sheet: United States initiatives on "conflict diamonds" (Ms. Baker).
- 18 USC 1956 (Laundering of monetary instruments) (Ms. Baker).
- 18 USC 1957 (Engaging in monetary transactions in property derived from specific unlawful activity) (Ms. Baker).
- Import, Export and Customs Powers (Defence) Act 1939, 29 February 1980 (Mr. Trett/Mr. Chilvers).
- Import and Export Control Act, 1990 (Mr. Trett/Mr. Chilvers).
- Letter from Mr. Graham Widdecombe, Head of Firearms and Explosives Section, to Mr. John Firmin, Ministry of Defence (Mr. Trett/Mr. Chilvers).
- The Firearms Acts (Amendments) Regulations 1992 (Mr. Trett/Mr. Chilvers).
- The Export of Goods (Control) Order 1994 (Mr. Trett/Mr. Chilvers).
- Firearms (Amendment) Act 1988 (Mr. Trett/Mr. Chilvers).
- Israeli position on Transfer, Trade and Manufacture of Small Arms and Explosives (Mr. Shahar).

- Argentinian Legislation Guidelines, Administrative Procedures and Registration Technique applied to Small Arms (Mr. Siderakis).
- Décret-loi du 18 avril 1939 fixant le régime des matériels de guerre, armes et munitions (Mr. De Jenlis).
- Décret du 6 mai 1995 modifié à l'application du décret du 18 avril 1939 visant le régime des matériels de guerre, armes et munitions (Mr. De Jenlis).
- Conseil directive du Conseil du 18 juin 1991 relative au contrôle de l'acquisition et de la détention d'armes (Mr. De Jenlis).
- Note: Réglementation française des armes et matériels de guerre (Mr. De Jenlis).
- Further Revised Contact List of Experts, 10/07/2000.
- Regulations of 10 January 1989 laid down by the Ministry of Foreign Affairs (Norway) relating to the implementation of control of the export of strategic goods, services and technology, as subsequently amended (Mr. Bernhardsen).
- Fax of 10 July 2000 addressed to Ms. Marcaillou enclosing the following Belgian documents:
  - Belgium's National Practices;
  - Unofficial coordination of the Law of 3 January 1933, on the production of, the trade in and the possession of weapons and on the trade of munition, modified by the Laws of 29 July 1934, 4 May 1936, 6 July 1978, 30 January 1991 and 5 August 1991;
  - Law of 5 August 1991 concerning the import, export and transit of weapons, munition and special material for military use and related technology.
- "Production, Research and Development and Advertisement" (Mr. Javed).
- Web site of the Office of Foreign Assets Control, United States Treasury (http://www.treas.gov/ofac/).
- Web site of the Swiss Federal Finance Administration, Money Laundering Control Authority (http://www.efv.admin.ch/gwg/e/index1.htm).
- Chairperson's summary of the informal meeting of members of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V.
- Declaration on small arms and light weapons of the Stability Pact for South-Eastern Europe (Istanbul Summit, November 1999).
- Joint Declaration on responsible arms transfers and Statement on harmonization of end-user certificates (regional conference on export control under the Stability Pact for South-Eastern Europe, Sofia, December 1999).
- Invitation by the Government of Canada to host an informal session of the Group of Experts in Ottawa (preferably the week prior to the final session of the Group, i.e., 5-9 February 2001) (Ms. Mason).

- Belgium:
  - Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime;
  - 28 mai 1956: Loi relative aux substances et mélanges explosibles ou susceptibles de déflagrer et aux engins qui en sont chargés, modifiée par Ordonnance (Bruxelles) du 30 juillet 1992;
  - 11 janvier 1993: Loi relative à la prevention de l'utilisation du système financier aux fins du blanchiment de capitaux;
  - 11 juin 1993: Arrêté royal relatif à la composition, à l'organisation, au fonctionnement et à l'indépendance de la cellule de traitement des informations financières;
  - 11 juin 1993: Arrêté royal portant nomination des membres de la cellule de traitement des informations judiciaires;
  - 10 août 1998: Loi modifiant l'article 327 bis du Code judiciaire et la loi du 11 Janvier 1993 relative à la prevention de l'utilisation du système financier aux fins du blanchiment de capitaux;
  - 10 janvier 1999: Loi relative aux organisations criminelles;
  - 4 fevrier 1999: Arrêté royal modifiant l'arrêté royal du 11 juin 1993 relatif à la composition, à l'organisation, au fonctionnement et à l'indépendance de la cellule de traitement des informations financières et rapportant l'arrêté royal du 10 août 1998 modifiant l'arrêté royal du 11 juin 1993 relatif à la composition, à l'organisation, au fonctionnement et à l'indépendance de la cellule de traitement des informations financières;
  - 9 fevrier 1999: Arrêté royal instituant le Comité de coordination interdépartemental pour la lutte contre les transferts illégaux d'armes;
  - 4 mai 1999: Loi instaurant la responsibilité penale des personnes morales.
- "Firearms marking: model standards and common serial number codes". Report of the informal workshop of the World Forum on the Future of Sport Shooting Activities, Sardinia, 22-24 June 2000.

United Nations documents

- Note verbale dated 25 February 2000 from the Permanent Mission of Portugal to the United Nations, transmitting the text of the European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Arms and the European Union Code of Conduct on Arms Exports (A/CONF.192/PC/3).
- Letter dated 3 February 2000 from the Permanent Representative of Norway to the United Nations addressed to the Secretary-General, transmitting the documents of the second Oslo Meeting on Small Arms, held in Oslo on 6 and 7 December 1999 (A/54/739).
- Report of the Secretary-General pursuant to General Assembly resolution 53/77 T, entitled "Illicit traffic in small arms" (A/54/404).

- Letter dated 5 March 1998 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General, transmitting the text of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Explosives, and Other Related Materials (A/53/78).
- Letter dated 17 December 1998 from the Permanent Representative of Togo to the United Nations addressed to the Secretary-General, transmitting the text of the Declaration of a Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa (A/53/763-S/1998/1194).
- Letter dated 10 March 2000 from the Chairman of the Security Council Committee established pursuant to resolution 864 (1993) concerning the situation in Angola addressed to the President of the Security Council, transmitting the final report of the Panel of Experts (S/2000/203).
- Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal (http://www.unep.ch/basel/text/text.html).
- United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) (http://www.uncitral.org/english/texts/transpor/hamburg.htm).
- United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (http://www.uncitral.org/english/texts/transpor/ott.htm).
- General Assembly resolution 54/54 V of 15 December 1999, entitled "Small arms".
- Report of the Secretary-General on the feasibility of restricting the manufacture and trade of small arms to manufacturers and dealers authorized by States (A/54/160).
- Report of the Group of Governmental Experts on Small Arms, pursuant to General Assembly resolution 52/38 J (A/54/258).
- Informal compilation of replies from Member States to the note verbale (DDA/2-2000/SA) from the Department for Disarmament Affairs (as of 12 May 2000).
- *Disarmament Study* Series *No. 28* (containing A/52/298, A/54/258 and A/54/155), United Nations publication, Sales No. E.99.IX.7.
- "Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991", report of the United Nations Disarmament Commission, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 42* (A/51/42), annex I.
- "Guidelines on conventional arms control/limitation and disarmament, with particular emphasis on consolidation of peace in the context of General Assembly resolution 51/45 N", report of the United Nations Disarmament Commission, *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 42* (A/54/42), annex III.
- Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.2/Rev.5).

- "Expert Group, appointed by Secretary-General, meets at Headquarters, 15-19 May, to study ways of curbing light weapons trade", United Nations press release DC/2709, 12 May 2000.

- Letter dated 17 September 1999 from the Permanent Representative of Finland to the United Nations addressed to the Secretary-General, transmitting the text of the EU Joint Action on Small Arms (A/54/374).

- United Nations press briefing on Small Arms Study, 17 May 2000.

- United Nations press releases DC/2660 (22 September 1999), DC/2661 (23 September 1999), and DC/2663 (28 September 1999) on the creation of a Regional Arms Register and Database on Light Weapons in Africa.

- "Modalities for an African Regional Arms Register and Database on Light Weapons Adopted", details from the Workshop Final Report, United Nations Regional Centre for Peace and Disarmament in Africa.

- Security Council resolution 1295 (2000), adopted by the Council at its 4129th meeting, on 18 April 2000 (S/RES/1295 (2000)).

- Security Council resolution 1298 (2000), adopted by the Council at its 4144th meeting, on 17 May 2000 (S/RES/1298 (2000)).

- Letter dated 29 March 2000 from the Chargé d'affaires a.i. of the Permanent Mission of Bulgaria to the United Nations addressed to the President of the Security Council (S/2000/267).

- Letter dated 21 June 1999 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/1999/706).

- Letter dated 8 December 2000 from the Chairman of the Latin American and Caribbean Regional Preparatory Meeting addressed to the Chairman of the Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, transmitting the Brasilia Declaration (A/CONF.192/PC/19).

- Letter dated 22 December 2000 from the Permanent Representative of Austria to the United Nations addressed to the Department for Disarmament Affairs of the United Nations Secretariat, transmitting a letter from the Austrian Minister for Foreign Affairs, in her capacity as Chairperson-in-Office of the Organization for Security and Cooperation in Europe addressed to the Secretary-General of the United Nations (A/CONF.192/PC/20).

- Note verbale dated 14 December 2000 from the Permanent Mission of France to the United Nations addressed to the Department for Disarmament Affairs of the United Nations, transmitting the text of the European Union Plan of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/PC/21).

- Letter dated 8 January 2001 from the Permanent Representatives of Mali and Togo to the United Nations addressed to the Chairman of the Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, transmitting the text of the Bamako Declaration on an African Common Position on the Illicit

Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (A/CONF.192/PC/23).

- Working paper by Switzerland and France on establishing a tracing mechanism to prevent and reduce excessive and destabilizing accumulation and transfer of small arms and light weapons (A/CONF.192/PC/25).

Notes

[a] The views expressed in this report are those of the author and do not necessarily reflect the views or positions of the Department of Foreign Affairs and Trade or of the Government of Canada.

[b] Ibid.

[c] Ibid.

Annex IV

[Original: English/French]

Relevant national legislation and regulations circulated to the Expert Group*

Argentina

Argentinian Legislation Guidelines, Administrative Procedures and Registration Technique Applied to Small Arms

"National Register of Arms, Ministry of Defence, Presidency of the Nation"

Belgium

Belgium's National Practices

Unofficial coordination of the Law of 3 January 1933, on the production of, the trade in and the possession of weapons and on the trade of munitions, modified by the Laws of 29 July 1934, 4 May 1936, 6 July 1978, 30 January 1991 and 5 August 1991

Law of 5 August 1991 concerning import, export and transit of weapons, munitions and special material for military use and related technology

Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime

28 mai 1956: Loi relative aux substances et mélanges explosibles ou susceptibles de déflagrer et aux engins qui en sont chargés, modifiée par Ordonnance (Bruxelles) du 30 juillet 1992

11 janvier 1993: Loi relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux

11 juin 1993: Arrêté royal relatif à la composition, à l'organisation, au fonctionnement et à l'indépendance de la cellule de traitement des informations financières

11 juin 1993: Arrêté royal portant nomination des membres de la cellule de traitement des informations judiciaires

10 août 1998: Loi modifiant l'article 327 bis du Code judiciaire et la loi du 11 janvier 1993 relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux

10 janvier 1999: Loi relative aux organisations criminelles

* This list is being circulated in the languages of submission only.

Bulgaria

Elements of the current Bulgarian legislation which form the legal framework for the secure production and storage of arms (including small arms and light weapons) and dual-use goods in the territory of the Republic of Bulgaria (in chronological order)

Dual-Use and Arms Licensing System in the Republic of Bulgaria

Outline of Bulgarian Export Control Legislation and Institutional Arrangements regarding Foreign Trade in Arms and Dual-Use Goods and Technologies

Decree No. 38 of 6 March 1996 for adoption of the Regulation of implementation of the Law on control of the foreign trade activity in arms and dual-use goods and technologies and for the amendment of legal acts of the Council of Ministers

Republic of Bulgaria, Law on the Control of Foreign Trade Activity in Arms and in Dual-Use Goods and Technologies

France

Décret-loi du 18 avril 1939 fixant le régime des matériels de guerre, armes et munitions

Décret du 6 mai 1995 modifié à l'application du décret du 18 avril 1939 fixant le régime des matériels de guerre, armes et munitions

Conseil directive du Conseil du 18 juin 1991 relative au contrôle de l'acquisition et de la détention d'armes

Note: Réglementation française des armes et matériels de guerre

Israel

Israel Position on Transfer, Trade and Manufacture of Small Arms and Explosives

Kenya

Republic of Kenya Firearms Act (Cap 114), Kenya Revenue Authority

Norway

Act No. 1 of 9 June 1961 relating to Firearms and Ammunition

Regulations of 10 January 1989 relating to the Implementation of the Control of Goods, Services and Technology, laid down by the Ministry of Foreign Affairs, as subsequently amended

Act of 18 December 1987 relating to Control of the Export of Strategic Goods, Services, Technology, etc.

Pakistan

Production, Research and Development and Advertisement

Poland

An analysis of Polish regulations restricting arms production and trade to State-licensed entities

Export Controls in Poland, Ministry of Foreign Affairs, Republic of Poland

1026 Act of 11 December 1997 on administering the foreign exchange of goods and services and a special exchange (*Official Journal of Poland*, No. 157, 23 December 1997, pp. 5078-5086)

Romania

Elements of the Romania legal framework on the control regime for the export of strategic goods

South Africa

"Regulation of Foreign Military Assistance Act", 1998, *Government Gazette*, Republic of South Africa

United Kingdom of Great Britain and Northern Ireland

Import, Export and Customs Powers (Defence) Act 1939, 29 February 1980

Firearms (Amendment) Act 1988

Import and Export Control Act, 1990

The Firearms Acts (Amendments) Regulations 1992

The Export of Goods (Control) Order 1994

United States of America

Federal Firearms Regulations Reference Guide (2000)

Commerce in Firearms in the United States

18 USC 1956 (Laundering of monetary instruments)

18 USC 1957 (Engaging in monetary transactions in property derived from specific unlawful activity)

"US Code Annotated, Title 22. Foreign Relations and Intercourse, Chapter 39 — Arms Export Control, Subcharter III — Military Export Controls"

"International Traffic in Arms Regulations, Part 129 — Registration and Licensing of Brokers", January 1998

United Nations A/CONF.192/PC/34

General Assembly

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Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
Third session
19-30 March 2001

Note verbale dated 15 March 2001 from the Permanent Mission of Japan to the United Nations addressed to the Secretariat of the United Nations, transmitting the general comments of Japan on the revised draft Programme of Action

The Permanent Mission of Japan to the United Nations presents its compliments to the Secretariat of the United Nations and has the honour to request that the attached general comments of Japan (see annex) on the revised draft Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/PC/L.4/Rev.1) be circulated as an official document of the third session of the Preparatory Committee for the Conference.

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Annex

General comments of Japan on the revised draft Programme of Action

1. The Government of Japan wishes to express its sincere appreciation to the Chairman of the Preparatory Committee for preparing in a timely manner the revised draft Programme of Action. It has been made simpler, shorter and more concise without its content having been sacrificed, and it will immensely facilitate the Preparatory Committee's work at its third session.

2. Japan wishes to submit the following general comments on the revised draft, so that they can be taken into account in the deliberations on the final draft, although it will offer more detailed and specific comments and suggestions related to some paragraphs during the meetings of the third session of the Preparatory Committee.

Section I
Preamble

3. As is often mentioned, this section has the character of a political declaration, and can be issued as an independent document. However, Japan prefers to keep this section as the preamble of the Programme of Action, which immediately follows as sections II, III and IV.

4. As a whole, the contents of this section are satisfactory, although some wording may be improved, and the ordering of paragraphs changed. Placing the objectives of the Conference at the end (para. 20) seems to be a sensible way to link this section with the Programme of Action contained in sections II, III and IV.

5. However, Japan wishes to propose that a phrase such as "decided to adopt and implement the following Programme of Action" be added at the end of this section. In this way the entire section becomes complete as a sentence. Also, in this way, paragraph 1 can be dispensed with in sections II, III and IV.

Section II

6. This section is divided into three subsections, namely, various measures at the national, regional and global levels; Japan strongly supports this division. The important thing here is to make clearer that at the national level the actor (or the entity expected to implement the measures of this Programme of Action) is the State, that at the regional level it is regional or subregional organizations and that at the global level it is the United Nations and other relevant international organizations. Towards this end each paragraph should begin with words like "States should ...", "Regional organizations should ...", etc.

7. With respect to the subsection dealing with various measures at the national level, apart from the question of improving the text and reordering paragraphs, Japan hopes that additional paragraphs dealing with minimum export criteria will be included.

8. With respect to the subsection dealing with various measures at the global level, there appears to be some confusion as to the actors expected to implement them. For example, if paragraph 31 is meant to pertain to States, this subject is already covered in paragraph 14. If the actor is the United Nations, as is appropriate

in this subsection, this paragraph should urge the Security Council to make greater efforts to ensure strict implementation of embargoes. Thus, the entire subsection will have to be reviewed carefully from the viewpoint of who are the actors.

Section III

9. Japan wishes to suggest that the title and contents of this section be re-examined.

10. The word "implementation" appears in the title here, instead of in section IV as was the case in the previous draft. However, implementation is essentially a part of the follow-up process to be covered in section IV. Perhaps the rationale for including "implementation" here in section III is provided in paragraph 6, where assistance for capacity-building in order to facilitate implementation is recommended. There is no doubt that there are regions, subregions and States that need such assistance in order to be able to implement many of the recommended measures. However, this is essentially a matter relating to "international assistance and cooperation". Therefore, "implementation" can be dropped from the title of this section, and restored to section IV if necessary.

11. Then, it should be kept in mind that there are two types of "international cooperation", namely (a) cooperation that applies to all measures recommended in section II, which can be more effectively implemented through bilateral, subregional or regional cooperation rather than by States alone, and (b) cooperation that can be characterized as "international assistance" involving financial and technical support. The first type of cooperation should be incorporated into section II as much as possible, which is already the case in the revised draft, while the second type should be enumerated in section III. In this way, section II would become a set of measures recommended to all States, regional and international organizations, while section III would become a set of measures related to international assistance where only those competent and willing international and regional organizations as well as States would offer the needed assistance to those States, subregions and regions requesting such assistance.

12. For example, the regional network of information-sharing and cooperation among police, customs, border control and other law enforcement agencies can appear in section II because such international cooperation should be recommended on a universal basis. However, when it comes to subregions where such a network for information-sharing and cooperation among law enforcement agencies cannot be well developed without external financial and technical assistance, such assistance should be mentioned in section III. In other words, section II can focus on the programme of action or guidelines applicable to all actors, while section III can focus on the programme of action applicable to those needy and willing actors, which, as was stressed in the Bamako and Brasilia declarations, is no less important.

13. From the above point of view, paragraphs 7, 9, 10, 11, 12 and 13 in section III can be moved to section II, although most of them are already covered there.

14. Consequently, Japan wishes to suggest that the title of this section should be altered to "International assistance (including assistance cooperation)", and that the contents of this section should be modified accordingly.

15. In this connection, it should be recalled that Japan has already made a proposal on this section, in its working paper of 12 January 2001 (A/CONF.192/PC/27).

Some new paragraphs dealing with the question of capacity-building and regional networks for information-sharing and cooperation may have to be added there, but Japan believes that the working paper can serve as a good example in reformulating this section.

Section IV

16. [The chapeaux of] paragraphs 1 and 2 should be deleted, as noted above (subparagraphs (a) and (b) would have to begin, "The United Nations should convene ...", and subparagraphs (c) and (d) would have to begin, "States are encouraged to ..."). Subparagraphs (a), (b), (c) and (d) of paragraph 1 appear to be the only substantial measures for follow-up as far as this revised draft is concerned. It is possible that some other concrete measures may be added, for example by expanding paragraph 32 of section II, or by stressing the need for developing and strengthening the global and regional frameworks for "international assistance". However, the contents of this section will be determined largely by what is agreed upon in sections II and III, and how much more the States participating in the Conference are willing to agree upon as follow-up measures.

15 March 2001

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Preparatory Committee for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
Third session
19-30 March 2001

Letter dated 16 March 2001 from the Permanent Representative of Namibia to the United Nations addressed to the Under-Secretary-General for Disarmament Affairs, transmitting the text of the Declaration concerning Firearms, Ammunition and Other Related Materials in the Southern African Development Community

I have the honour to attach herewith the text of the Declaration concerning Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC), which was adopted by the SADC Heads of State and Government at Windhoek on 9 March 2001 (see annex).

I shall highly appreciate it if the Declaration could be circulated as an official document of the Preparatory Committee for the United Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

(*Signed*) Martin **Andjaba**
Ambassador
Permanent Representative

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Annexe

Déclaration concernant les armes à feu, les munitions et autres matériels connexes dans la Communauté de développement de l'Afrique australe

Préambule

Nous, chefs d'État et de gouvernement de :

La République d'Angola
La République du Botswana
La République démocratique du Congo
Le Royaume du Lesotho
La République du Malawi
La République de Maurice
La République du Mozambique
La République de Namibie
La République des Seychelles
La République d'Afrique du Sud
Le Royaume du Swaziland
La République-Unie de Tanzanie
La République de Zambie
La République du Zimbabwe

Gravement préoccupés par la fabrication, le stockage, le trafic, la possession et l'utilisation illicites des armes à feu, en particulier de celles utilisées pour commettre des crimes violents, et par le fait qu'elles contribuent à favoriser le degré élevé d'instabilité, de conflits prolongés et de bouleversements sociaux constaté en Afrique australe et dans l'ensemble du continent africain,

Réaffirmant que l'on doit accorder la priorité aux mesures visant à prévenir, combattre et éradiquer la fabrication, le stockage, le trafic, la possession et l'utilisation illicites des armes à feu, des munitions et des autres matériels connexes, en raison de leur association, notamment, avec le trafic des stupéfiants, le terrorisme, la criminalité organisée transnationale, les activités de mercenaires et d'autres actes criminels violents,

Conscients de la nécessité de prévenir, combattre et éradiquer d'urgence la fabrication, le stockage, le trafic, la possession et l'utilisation illicites d'armes à feu et de munitions en raison des effets néfastes de ces activités sur la sécurité de chaque État et de la région, des risques qu'elles présentent pour le bien-être des populations de la région, pour leur développement social et économique et leur droit de vivre en paix,

Convaincus de ce que les mesures visant à prévenir, combattre et éradiquer la fabrication, le stockage, le trafic, la possession et l'utilisation illicites des armes à feu et des munitions et d'autres matériels connexes exigent la coopération internationale, l'échange d'informations et d'autres mesures appropriées aux niveaux national, régional et mondial,

Soulignant la nécessité, en particulier pendant les processus de paix et les situations postconflictuelles, d'assurer un contrôle efficace des armes à feu, des munitions et autres matériels connexes,

Prenant en considération :

- Les travaux menés par l'Organisation des Nations Unies, par l'intermédiaire de son groupe d'experts sur les armes légères et les progrès accomplis en ce qui concerne le Protocole contre la fabrication et le trafic illicites des armes à feu,

de leurs parties et composants et de leurs munitions, additionnel à la Convention contre la criminalité transnationale organisée;

- Les travaux entrepris par le Comité préparatoire de la Conférence des Nations Unies de 2001 sur le commerce illicite des armes légères sous tous ses aspects; et

- La Déclaration conjointe de la Communauté pour le développement de l'Afrique australe (CDAA) et de l'Union européenne (UE) sur le trafic illicite des armes légères de novembre 2000,

Réaffirmant les initiatives de l'Organisation de l'unité africaine (OUA), en particulier l'adoption le 1er décembre 2000 par le Conseil ministériel de l'OUA de la Déclaration de Bamako sur une position africaine commune concernant la prolifération, la circulation et le trafic illicites des armes légères, ainsi que les travaux préparatoires du projet de déclaration menés par la première réunion continentale d'experts africains tenue à Addis-Abeba en mai 2000,

Se félicitant des travaux menés par l'Organisation régionale de coopération entre les chefs de la police de l'Afrique australe visant à prévenir, combattre et éradiquer la prolifération des armes légères, y compris les travaux entrepris pour élaborer le projet de protocole de la CDAA sur les armes à feu, les munitions et autres matériels connexes et de son programme d'application,

Se félicitant en outre des travaux entrepris par le Groupe de travail des armes légères de la CDAA et de son successeur, le Comité sur les armes légères de la CDAA,

Nous déclarons, par la présente, notre ferme détermination de prendre dans la région de la CDAA toutes les mesures nécessaires pour prévenir, combattre et éradiquer le trafic et la prolifération illicites des armes à feu, des munitions et d'autres matériels connexes dans la région.

Nos gouvernements entreprendront, notamment, de remanier les législations nationales en vue de :

- Interdire la possession sans limitation par les civils d'armes de petit calibre et interdire totalement la possession et l'utilisation par les civils d'armes légères;

- Réglementer et centraliser l'enregistrement de toutes les armes à feu possédées par des civils;

- Réglementer et contrôler la fabrication, l'importation, l'exportation, le transfert, la possession et l'utilisation d'armes à feu et de munitions ainsi que d'autres matériels connexes;

- Normaliser le marquage et l'identification des armes à feu lors de leur fabrication, de leur importation et de leur exportation;

- Réglementer le courtage des armes à feu;

- Adopter une législation nationale et prendre d'autres mesures sanctionnant les violations d'embargos sur les armes décidés par le Conseil de sécurité de l'ONU;

obsolete through, inter alia, peace agreements, demobilization or integration of ex-combatants or re-equipping or restructuring of national armed forces or armed State bodies;

- Adopt coordinated national policies that ensure that confiscated or unlicensed firearms that come into the possession of State authorities are destroyed;
- Develop joint and combined operations to locate, seize and destroy caches of firearms and ammunition and other related materials left over after armed conflicts and civil wars;
- Introduce programmes that encourage the reduction of legal firearms and the voluntary surrender of illegal firearms;
- Cooperate in providing mutual legal assistance in a concerted effort to suppress the illicit manufacturing of, trafficking in, possession and use of firearms and ammunition and other related materials;
- Promote information exchange relating to the accumulation of firearms owned by civilians, and develop policies that reflect transparency in the control of such firearms;
- Institute appropriate and effective measures for cooperation between law enforcement agencies in order to curb corruption associated with the illicit manufacturing of and trafficking in, possession and use of firearms, and ammunition and other related materials.

We undertake to develop and adopt a legal instrument in the form of a regional protocol on the control of firearms and ammunition and other related materials.

We firmly believe that this will contribute towards preventing, combating and eradicating the stockpiling and illicit trafficking in firearms in southern Africa.

In witness whereof, we, the Heads of State or Government of the Southern African Development Community have signed this Declaration.

Done at Windhoek on this 9th day of March 2001, in three (3) original texts, in the English, French and Portuguese languages, all texts being equally authentic.

(*Signed*) José Eduardo **Dos Santos**
Republic of Angola

(*Signed*) F. G. **Mogae**
Republic of Botswana

(*Signed*) Joseph **Kabila**
Democratic Republic of the Congo

(*Signed*) P. M. P. **Mosisili**
Kingdom of Lesotho

(*Signed*) Bakili **Muzuli**
Republic of Malawi

(*Signed*) Anerood **Jugnauth**
Republic of Mauritius

(*Signed*) J. **Chissano**
Republic of Mozambique

(*Signed*) Sam **Nujoma**
Republic of Namibia

(*Signed*) Jeremy **Bonnelame**
Republic of Seychelles

(*Signed*) Thabo **Mbeki**
Republic of South Africa

(*Signed*) A. R. V. **Khoza**
Kingdom of Swaziland

(*Signed*) Benjamin W. **Mkaia**
United Republic of Tanzania

(*Signed*) F. **Chiluba**
Republic of Zambia

(*Signed*) Robert **Mugabe**
Republic of Zimbabwe